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Attorney for Defendant
MOHAMMED YOUSEF CHAUDHRY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOHAMMED YOUSEF CHAUDHRY,
ALI H. KHAN,

Defendants.

No. CR 03-40210

**DEFENDANT CHAUDHRY'S
RESPONSE TO GOVERNMENT'S
MOTION TO EXCLUDE TESTIMONY
CONCERNING ALLEGATIONS OF
FRAUD BY IRS AGENT JANET
APPLETON**

Pre-Trial Conference:
September 11, 2007
Dept.: Courtroom 3

IRS agent Janet Appleton is being sued by the Milpitas
Community Church in Milpitas Community Church v. Janet Appleton,
Santa Clara Superior Court No. 106CV069856. In a declaration by
the Chairman of the Church Board of Trustees filed in support of a
request for a restraining order, the Church declared that Agent
Appleton has, among other things, (1) sent letters to people
representing herself as a trustee of the church when she was not;
(2) "use[d] letterhead that she has made purporting to be from the
Church Body"; (3) "crippled the Church financially by preventing
regular deposits to be made"; (4) removed Church financial

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IRS AGENT JANET APPLETON

1 documents and wiped financial records from the Church computers.

2 Defendant first learned of these allegations last week when
3 the government filed its motion to preclude defendants from
4 introducing evidence of this conduct. Since then, the government
5 has provided the defense with a copy of the underlying civil
6 complaint and restraining order papers. So far, no documents
7 setting out in any greater detail the allegations, such as a
8 police report, have been provided. The government's seems to say
9 that a state embezzlement charge was filed and/or not pursued.
10 Undersigned counsel is commencing an investigation into the
11 veracity of the allegations.

12 A. The Government's Motion Should Be Denied Because The
13 Allegations Are Highly Probative of Credibility

14 The allegations against Agent Appleton by the Church, if
15 true, are clearly probative of truthfulness and honesty. It is
16 also clear that Agent Appleton's credibility will be a material
17 issue in this case. She was the IRS agent in charge of
18 investigating the alleged tax deficiencies that are now charged in
19 this case. The integrity of her investigation and its conclusions
20 are therefore central to the prosecution of Mr. Chaudhry, and to
21 his defense.

22 Should Agent Appleton testify, the defense should be
23 permitted during cross examination to inquire into matters
24 reflecting on her credibility, including specific instances of
25 conduct alleged by the Milpitas Community Church, as set forth in
26 Rule 608(b) of the Federal Rules of Evidence.

27 The defense should also be permitted to present relevant
28 opinion or reputation evidence concerning Agent Appleton's

1 character for truthfulness or untruthfulness, in conformance with
2 Rule 608(a).

3 Finally, should Agent Appleton deny any of the specific
4 allegations of misconduct alleged by the Church, and defendant can
5 prove them with extrinsic evidence, defendant should be allowed to
6 present that extrinsic evidence to impeach her:

7 Once a witness . . . testifies as to any
8 specific fact on direct testimony, the trial
9 judge has broad discretion to admit extrinsic
10 evidence tending to contradict the specific
11 statement, even if such statement concerns a
12 collateral matter in the case. See Walder v.
13 United States, 347 U.S. 62, 98 L. Ed. 503, 74
14 S. Ct. 354 (1954).

15 United States v. Benedetto, 571 F.2d 1246 (2d Cir. 1978).

16 The government mistakenly argues that this evidence should be
17 analyzed under Rule 608 and 609. But impeachment by contradiction
18 is, rather, analyzed pursuant to Rule 607:

19 Impeachment by contradiction is properly
20 considered under Rule 607, not Rule 608(b).
21 Weinstein § 607.06, at 607-72-607-84. The
22 Second Circuit has noted that, "Rule 607
23 appears to allow the continuation of federal
24 practice in admitting extrinsic evidence to
25 impeach specific errors or falsehoods in a
26 witness' direct testimony, subject to Rule 403
27 considerations." United States v. Benedetto,
28 571 F.2d 1246, 1250 n.7 (2d Cir. 1978).
Weinstein also suggests that courts should
analyze such evidence under Rule 403.
Weinstein § 607.06[3][b], at 607-79; §
608.12[6][a], at 608-42. We agree.

29 United States v. Castillo, 181 F.3d 1129, 1133 (9th Cir. 1999).

30 Given the importance of Agent Appleton's testimony, and hence
31 her credibility, the defense should be given wide latitude in
32 confronting and cross examining her. U.S. Const., VI Amend.

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1 B. Defendant Requests An Order Requiring Full Compliance
2 With Brady and Henthorn

3 Defendant did not know of these allegations against Agent
4 Appleton until last week when the government filed its motion.
5 The civil complaint against Appleton by the Church was filed more
6 than one year ago, in August, 2006, although the case has
7 apparently neither settled nor been sent out for trial yet.

8 Defendant does not know when the government learned of the
9 allegations, and defendant does not suggest that the government
10 intentionally delayed disclosing them. However, given the
11 lateness of this disclosure, defendant feels it prudent to request
12 assurances that the prosecution is in full compliance with its
13 obligations under both Brady v. Maryland, 373 U.S. 83 (1963) and
14 United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991).

15 The government has an obligation under Brady to provide
16 exculpatory evidence to a criminal defendant. The government has
17 a duty to disclose Brady material even in the absence of a request
18 by the defense. See Kyles v. Whitley, 514 U.S. 419, 433, 131 L.
19 Ed. 2d 490, 115 S. Ct. 1555 (1995). Impeachment evidence is
20 exculpatory evidence within the meaning of Brady. See Giglio v.
21 United States, 405 U.S. 150, 154, 31 L. Ed. 2d 104, 92 S. Ct. 763
22 (1972); see also United States v. Bagley, 473 U.S. 667, 676, 87 L.
23 Ed. 2d 481, 105 S. Ct. 3375 (1985).

24 Brady/ Giglio information includes "material . . . that bears
25 on the credibility of a significant witness in the case." United
26 States v. Brumel-Alvarez, 991 F.2d 1452, 1461 (9th Cir. 1993),
27 amending 976 F.2d 1235 (9th Cir. 1992) (quoting United States v.
28 Striffler, 851 F.2d 1197, 1201 (9th Cir. 1988)). Impeachment

1 evidence is favorable Brady/ Giglio material "when the reliability
2 of the witness may be determinative of a criminal defendant's
3 guilt or innocence." Id. at 1458 (citing Giglio, 405 U.S. at 154);
4 see also United States v. Serv. Deli Inc., 151 F.3d 938, 943 (9th
5 Cir. 1998).

6 Similarly, defendant requests full compliance with United
7 States v. Henthorn, 931 F.2d 29 (9th Cir. 1991). There are a
8 number of government agents listed as witnesses against Mr.
9 Chaudhry. Defendant does not have access to their personnel
10 files, but he is entitled to know the government has reviewed the
11 materials to assure that everything significantly bearing on their
12 credibility has been disclosed.

13 CONCLUSION

14 Defendant reserves the right to request a reasonable
15 continuance if necessary to fully investigate the allegations
16 regarding Agent Appleton. If true, they are highly relevant of
17 her credibility. A reasonable juror could well find a person who
18 falsely represents themselves as acting on behalf of a church, and
19 who took church property, less credible, even if that person was a
20 government agent. The jury is entitled to hear that information
21 and weigh it in determining whether to believe such an important
22 government witness.

23 DATED: September 2, 2007

Respectfully submitted,

24
25 S/Erik Babcock

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26 LYNN KESLAR

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